



Explain: *See* 42 U.S.C. § 7604(c)

C. Facts:

- i. OG&E owns and operates a power plant in Muskogee, Oklahoma, which consists of three steam turbine generating units fired primarily on subbituminous coal.
- ii. In 1978, EPA issued permit PSD-OK-57 to authorize the construction of Unit 6 at the Muskogee plant.
- iii. The permit includes emission limits for opacity and total suspended particulate matter.
- iv. The Complaint alleges that Unit 6 has emitted air pollution in amounts that violate the emission limits in the permit.

D. Law: 42 U.S.C. §§ 7604, 7413 (CAA); OAPCR 1.4.4.

4. Discovery Plan: The parties jointly propose to the Court the following discovery plan:

Discovery will be needed on the following subjects:

- i. What are the alleged TSP and opacity emission exceedances and whether any defenses are available (*e.g.* startup, shutdown and malfunction).
- ii. The appropriate measures that could be ordered by the Court to enjoin and/or remedy any Clean Air Act violations found.

All discovery commenced in time to be completed by a date 14 days prior to the final Pretrial Conference.

Maximum of twenty-five (25) interrogatories by each party to any other party. Responses due thirty (30) days after service.

Maximum of fifty (50) requests for admission on fact issues by each party to any other party. Unlimited requests for admission on evidentiary issues by each party to any other party. Responses due thirty (30) days after service.

Maximum of ten (10) fact depositions by plaintiff and five (5) by defendant.

Each fact deposition limited to a maximum of seven (7) hours unless extended by agreement of parties. Each expert deposition limited to a maximum of fourteen (14) hours unless extended by agreement of parties.

5. All parties consent to trial before Magistrate Judge?

\_\_\_\_\_ Yes        X     No

6. Settlement Plan:

Settlement Conference requested after the Court's ruling on Defendant's

forthcoming Motion for Summary Judgment.

7. Estimated Litigation Costs:

A. Plaintiff

(1) Through discovery cutoff	\$ 160,000
(2) Discovery cutoff through trial	\$ 60,000
(3) Appeal	\$ 15,000
Total	\$ 235,000

B. Defendant

(1) Through discovery cutoff	\$ 281,000
(2) Discovery cutoff through trial	\$ 127,000
(3) Appeal	\$ 121,000
Total	\$ 529,000

**GRAND TOTAL (All Parties)**      \$ 764,000

8. Actual amount in controversy

Civil penalties up to \$37,500 per day (\$13,687,500 per year) per violation. The total will depend on the number of days of violation proven for each type of violation.

9. Additional Factors:

Defendant plans to file a Motion for Summary Judgment based on its previous settlement of similar claims with Oklahoma Department of Environmental Quality in the near future. The Court's ruling on that motion could have a significant impact on the approach suggested by this Joint Status Report.

APPROVED BY:

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